CRIMINAL LAW—NEW TRIAL—NEWLY DISCOVERED EVIDENCE.—STATE v. LILLISTON, 54 So. E. 427 (N. C.).—*Held*, that in a criminal case, a motion for a new trial would not be granted by the Supreme Court, to enable the defendant to produce evidence which he had in possession at the time of the trial but withheld from the jury. Connor and Walker, JJ., *dissenting*.

In the great majority of our states the doctrine is well established that in the absence of any constitutional or statutory provision to the contrary it is the exclusive province of the court to determine all questions of law that arise in criminal prosecutions. *Sparf v. U. S.*, 156 U. S. 51; *State v. Elwood*, 73 N. C. 189. As a general rule a new trial will be granted, if since the former trial new evidence has been found which would in all probability have changed the result of the trial. *Simmons v. Mann*, 72 N. Car. 12; *Husted v. Mead*, 58 Ct. 55. But facts which are within the knowledge of the defendant at the trial and are not put in evidence as in this case, do not constitute new evidence and are not grounds for a new trial. *Heard Civil Pleading*, p. 82; *Tilley v. State*, 55 Ga. 557; *People v. Cesena*, 90 Cal. 381. In criminal actions the Supreme Court of any state, in the absence of any constitutional or statutory provision to the contrary, is limited to a review and correction of errors of law committed in the trial below. *Carson v. Dellinger*, 90 N. C. 226; *Sumrion v. Mann*, 92 N. C. 12.

EVIDENCE—OFFER OF COMPROMISE.—FINN v. NEW ENGLAND TELEPHONE & TELEGRAPH COMPANY, 64 ATLANTIC 490 (MAINE).—*Held*, that the admissability or non-admissability of evidence offered to prove an alleged compromise depends upon the intention of the party seeking it. If he intends his offer to be a compromise settlement it is inadmissable. If he intends it to be an admission of liability, coupled with an endeavor to settle such liability, then it is admissible to prove such liability.

The general rule seems be to that a written offer to compromise, it being on its face an offer to compromise the case, is not admissable. *Tufts v. DeBignon*, 61 Ga. 322. Admissions of a party, when made for the purpose of effecting a compromise of the matter in dispute, should be excluded as evidence, on the ground of public policy. *Rockefeller v. Newcomb*, 57 Ill. 186. But it is held that no part of an offer to compromise is admissable if it is expressly stated to be made without prejudice. *White v. Old Dominion Steamship Co.*, 102 N. Y. 660; *Tennant v. Dudley*, 144 N. Y. 504. Some courts have held that while an offer of compromise, as such, is inadmissable, statements of independent facts are admissable against the party making them. *Chaffe et al v. Mackenzie*, 43 La. Ann. 1062; *Rose v. Rose*, 112 Cal. 341; *Garner et al v. Myrick et al*, 30 Miss. 448. It is held in some jurisdictions that an offer of compromise is not admissable, either as evidence of a fact from which the liability of the party making the offer may be inferred, or as an admission of such liability. *Sherber v. Piser & Yenney*, 26 O St. 476. Statements not admissable for any purpose if made in offer of compromise. *Robertson v. Blair*, 56 S. C. 96; *Johnson v. Wilson*, 1 Pinn. 65, (Wisc.).

EVIDENCE—RES GESTÆ—INJURIES TO SERVANT.—SO. IND. R. R. Co. v. OSBORNE, 78 N. E. 248 (IND.).—*Held* that in an action for injuries the defendant was not harmed by the admission of the declaration against interest made by its agent, an engineer, forty-five minutes after the accident. Wiley J., *dissenting*.

It is a well-established rule of law in the United States that when a declaration against interest is made by an agent which is unquestionably subsequent both as to time and casual relation, such declaration is inadmissable. *Williams v. Cambridge R. R. Co.*, 144 Mass., 148; *Packet Co. v. Clough*, 20 Wall. (U. S.) 528. But if the declaration is subsequent in time, while in point of casual relation to the main act substantially contemporaneous, as occurs in this case, it will be admitted in some states and rejected in others. The weight of modern authority, however, favors the relaxation of this rule, when the declaration by the agent is undesigned and spontaneous. *Huffcut on Agency*, Ed. 2, p. 184; *Olive, etc., R. R. Co. v. Stein*, 133 Ind. 243; *Hermes v. Chicago, etc., R. R. Co.*, 80 Wis. 590. Yet this case does not necessarily favor this rule, since its admission is harmless, inasmuch as facts sought to be shown have been, otherwise, fully and properly established. *Webb v. Barling*, 81 U. S. 406; *Gray v. Borrough of Danbury*, 54 Conn. 574. It seems, however, in the southern and eastern states, and in the U. S. Supreme Court, such declarations made by railroad conductors, engineers, etc., as to the accident are generally excluded. *Southerland v. Wilmington, etc., R. R. Co.*, 106 N. C. 100; *Furst v. 2nd Ave. R. R. Co.*, 72 N. Y. 106; *Vicksburg, etc., R. R. Co. v. O'Brien*, 119 U. S. 99.

HOMICIDE—SELF-DEFENSE—DUTY TO RETREAT.—HILL V. STATE, 41 So. 621 (ALA.).—*Held,* that the plaintiff should have retreated if thereby he could have avoided the necessity of taking the life of the decedent.

Upon this question the authorities are by no means uniform. This case follows the common law doctrine and the English rule as expressed by Blackstone, Volume IV, p. 185; and as declared by several states, that homicide is justifiable only when every means of escape has been exhausted. *State v. Walker,* 9 Honst. 464 (Del.); *Compton v. State,* 110 Ala. 24. Other states, and it sems with the greater weight of authority, hold that the party whose person is unlawfully attacked is not bound to retreat in order to avoid the necessity of killing his assailant. *State v. Bartlett,* 178 Mo. 658; *State v. Sherman,* 16 R. I. 631; *Beard v. N. S.,* 158 N. S. 550. The reason for the more lenient construction now placed upon the strict requirement of the common law may be attributed to the introduction of fire arms and the recognition by courts that self-defense should not be distorted into self-destruction by the unreasonable requirements of the duty to retreat. *Duncan v. State,* 49 Ark. 543.

INFANTS—CONTRACTS—FALSE REPRESENTATIONS AS TO AGE—EFFECT.—COMMANDER V. BRAZIL, 41 SOUTHERN 497 (MISS.).—*Held,* an infant who, after reaching the stage of maturity indicating that he is of full age, enters into a contract falsely representing himself to be of age and accepts the benefits thereof, is estopped from denying that he is not of age when the contract is sought to be enforced against him; the party dealing with him believing him of full age.

The question here involved has long been a much mooted question in the various jurisdictions of this country. And although the courts have by no means been harmonious in their conclusions the weight of authority on this point is well defined. At law, the fraud of an infant in falsely representing himself to be of age and so inducing another to contract with him, does not estop him from pleading his infancy if sued upon the con-